

Public Interest Organizations Across the Political Spectrum Agree: New Mexico Needs a New Civil Rights Act

Hello Committee Members,

On November 20, 2020, the New Mexico Civil Rights Commission issued a 45-page report recommending that New Mexico adopt draft legislation designed to provide New Mexico residents a meaningful remedy when government workers violate their constitutional rights. That legislation is now making its way through the New Mexico Legislature as H.B. 4.

The undersigned public interest organizations commend the work of the New Mexico Civil Rights Commission and encourage the Legislature to pass H.B. 4. Our views span the political spectrum. Although we disagree on some matters, we agree on the importance and urgency of reforming civil rights laws in New Mexico.

Existing law provides few remedies for individuals whose constitutional rights are violated by government workers. Judge-made doctrines like qualified immunity routinely protect bad actors from liability unless the right they violated—your constitutional right—was “clearly established.”¹ In practice, this means victims of government misconduct can never be made whole unless a court previously held that the exact same conduct in the exact same situation was unconstitutional. Even the slightest factual distinction is enough to bar relief.

The draft legislation produced by the New Mexico Civil Rights Commission changes that. It allows victims of misconduct to sue the government directly, without regard for the federal doctrine of qualified immunity. And it indemnifies the government worker from liability. In other words, the draft legislation holds the government—not the individual government worker—responsible when it violates a person’s constitutional rights.

Opponents of reform argue that it will bankrupt cities and counties with unnecessary costs. But these costs already exist. They’re just being paid by the countless victims of government abuse. When the government violates a person’s constitutional rights, the government *should* be held responsible. Without a remedy, the constitution is mere parchment, and the citizens of New Mexico have no guarantee our government will fulfill the protections established by our Founders.²

¹ *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Pierson v. Ray*, 382 U.S. 547 (1967).

² One of the signing organizations, the Institute for Justice (IJ), submitted model legislation to the New Mexico Civil Rights Commission that goes further than what the Commission recommended. Specifically, IJ’s Protect Everyone’s Constitutional Rights Acts (PECRA), includes a provision that empowers governments to fire bad government workers when they violate constitutional rights, notwithstanding the protections they receive under their collective-bargaining agreements. This is one of many options that state legislators should consider in its final legislation to ameliorate costs and address other issues.

Thanks to the work of the New Mexico Civil Rights Commission, New Mexico has a unique opportunity to lead the country in civil rights reform. We believe New Mexico should take it.

Sincerely,

The Institute for Justice (IJ) is a libertarian public interest law center committed to defending the essential foundations of a free society by securing greater protection for individual liberty. In 2020, IJ launched its Project on Immunity and Accountability, a comprehensive litigative and legislative effort dedicated to the simple idea that government officials are not above the law.

American Civil Liberties Union of New Mexico's (ACLU-NM) mission is to protect and advance justice, liberty and equity as guaranteed by the constitutions of New Mexico and the United States. We work to make justice, liberty and equity realities for all people in New Mexico, with particular attention to the rights of people and groups who have historically been marginalized.

The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice. Since the organization's founding, 375 people have been exonerated from crimes they did not commit through DNA testing in the United States.

The National Police Accountability Project (NPAP) is an organization of civil rights lawyers and legal workers who represent plaintiffs in civil actions against police and corrections officers for violations of constitutional rights and other misconduct. Our members include the leading practitioners in this field, and with approximately six hundred attorney members nationwide, we are responsible for a substantial share of the law enforcement misconduct litigation that is filed annually. Through amicus briefs, continuing legal education programs, and innovative publications by our members who are academics, for twenty years we have driven the development of § 1983 jurisprudence. We are committed to the support of all measures, such as the proposed civil rights legislation in New Mexico, that will secure and enhance the accountability of law enforcement officers for misconduct.

Americans for Prosperity (AFP) is a grassroots organization that is dedicated to bringing people together to change our public policies and our government for the better. We believe that an effective criminal justice system protects people and preserves public safety, respects human dignity, restores victims, removes barriers to opportunity for people with criminal records, and ensures equal justice for all under the law.
